Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

NO. 84-810

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1984

MAX SCHNEIER,
Petitioner,

v.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

REPLY TO MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

MAX SCHNEIER, Pro Se
P.O. BOX 9701,
MARINA DEL REY, CA. 90295
(213) 393-0505

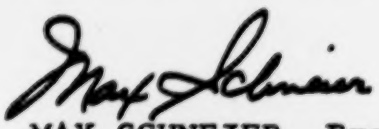
IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1984

MAX SCHNEIER, PETITIONER	)	
	)	
vs.	)	No.84-810
	)	
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT	)	

REPLY TO MEMORANDUM FOR

THE RESPONDENT IN OPPOSITION



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RULES OF SUPREME COURT OF THE UNITED STATES

Rule 28.2 . . . . . .

ARGUMENT

I - Petitioner mailed 40 copies of his petition for a writ of certiorari to the Court of Appeals for the Ninth Circuit on October 22,1984, certified mail, return receipt requested, at the U.S.Post Office, Mar Vista Station, LosAngeles,California.[1/]

Since October 29,1984, was the last day for the timely filing of the petition, its certified mailing on October 22,1984, conclusively disproves respondent's main contention of late filing in his Memorandum.[2/]

The November 1, 1984, date respondent refers to in his Memorandum is the

1/ Copy of Certified Mail Receipt, No.708 426 401, showing an October 22,1984, postmark,postage in the amount of $37.23. (See Appendix, p.1).

2/ Rule 28.2 of the Rules of the Supreme Court of the United States,states inter-alia,that "Any document shall be timely filed if it has been deposited in a U.S. Post Office with first class postage pre-paid,and properly addressed to the Clerk of this Court,within the time allowed for filing. (Emphasis added.)

docketing date, not the filing date.[3]

Also enclosed with the 40 copies of the petition was a letter of transmittal to the Clerk of the Supreme Court of the United States,[4] together with the original, notarized copies of the Certificates of Service on the Solicitor General of the United States,[5] and the Assistant Attorney General, Tax Division.[6]

3/ Letter dated November 28, 1984, over the signature of Francis J. Lorson, Chief Deputy Clerk, Supreme Court of the United States, showing that the petition was docketed on Nov. 1, 1984, as No. 84-810. (See App. p.2)

4/ Petitioner mislaid this letter during his interim change of residence. The original should be in the files in the Clerk's office.

5/ Copy of notarized Certificate of Service on the Solicitor General of the United States dated October 22, 1984. (See App., pp.3-4)

6/ Copy of notarized Certificate of Service on Glenn L. Archer, Assistant Attorney General, Tax Division, dated October 22,1984. (See App., pp.5-6)

In addition,three (3) copies of the petition, together with a copy of the Certificate of Service were mailed on October 22, 1984 to the Solicitor General of the United States.[7/] A similar mailing was made to the Assistant Attorney-General, Tax Division on that same date.[8/]

The petitioner believed in good faith that he was following the telephone instructions of the Clerk's Office of the Supreme Court of the United States and this Court's Rules when he submitted notarized Certificates of Service on the Solicitor General of the United States and the Assistant Attorney General,Tax Division together with 40 copies of the petition and the letter of transmittal to the Clerk. If he had been aware of the notarized

7/ Copy of U.S. Postal Service, Certificate of Mailing, postmarked October 22,1984. (See App. p.7)

8/ Copy of U.S.Postal Service, Certificate of Mailing,postmarked October 22,1984. (See App. p.7)

statement requirement of Rule 28.2 to accompany the petition, it would have been no problem to have one of his law school professors, who is a member of the Bar of this Court, file such statement setting forth the mandated details concerning the mailing of the petition and its timeliness.

What is evidently unknown to the Solicitor General is the fact that the 40 copies of the petition mailed on October 22, 1984, were returned to petitioner by the Clerk of the Supreme Court on November 2, 1984.[9/] Petitioner made the required changes and remailed the 40 copies to the Clerk, Supreme Court of the United States on November 9, 1984,[10/] together with a

9/ Copy of letter dated November 2,1984, over the signature of Edward C.Schade, Assistant Clerk, stating that the petitions were being returned because "lower courts decisions and other materials in the Appendix were reduced in size" instead of being retyped in the required print size. (See App. p.8.

10/Copy of Certified mail receipt no. P. 666 210 435, postmarked November 9,1984, postage in the amount of $37.62. (See App.,p.9)

letter of transmittal[11] and original, notarized Certificates of Service on the Solicitor General of the United States[12] and the Assistant Attorney-General, Tax Division.[13]

Additionally, three (3) new corrected copies of the petition were sent to the Solicitor General on November 9,1984, together with a copy of Certificate of Service.[14] The assistant Attorney General, Tax Division was sent 3 sets of all corrections to be used to amend the copies of the petition he had already received, and a

---

11/ Copy of letter of transmittal dated Nov.9,1984,addressed to Clerk Supreme Court of U.S. indicating, inter-alia,that petitioner was following the instructions of Francis J.Lorson, Chief Deputy Clerk. (See App. p.10)

12/ Copy of notarized Certificate of Service on the Solicitor General of the United States dated Nov. 9,1984) (See App.pp.11-12)

13/ Copy of notarized Certificate of Service on the Assistant Attorney General of the United States dated Nov.9,1984(See App.pp. 13-14)

14/ Copy, U.S.Postal Service Certificate of Mailing postmaked November 9,1984(See App. pp.15)

copy of the Certificate of Service.[15/]

Petitioner was telephonically assured by the Clerk's Office that, even though the petitions were returned for correction, the initial filing date of October 22,1984, would obtain.

II - Petitioner avers that it would not be consistent with the American traditions of fair play and justice to deny petitioner a review of his petition for a writ of certiorari by the Supreme Court of the United States merely because of a technicality, e.g., the Rule 28.2 requirement that a member of the Bar of the Court file a notarized statement "setting forth the details of the mailing and stating that to his knowledge the mailing took place on a particular date within the permitted time."

15/ Copy, U.S.Postal Service Certificate of Mailing postmaked November 9, 1984. (See App. p.15)

It defies common sense to suppose that such a notarized statement would be more sufficient, trustworthy,and material to prove that the mailing was properly and timely made than the actual postmarked, certified mail receipt; the letters of transmittal together with the original, notarized copies of the aforementioned Certificates of Service; and the U.S.Postal Service Certificates of Mailing previously referred to.

Additionally, petitioner respectfully requests the Court to consider the fact that he is in his final year at law school and will be taking the California bar examination in July 1985. Petitioner assures the Court that he is ever-conscious of his duties and obligations to the Court, the respondent, the Solicitor General, and the Assistant Attorney-General, Tax Division. As a future 'officer of the court,' petitioner prays,that the Court will give

appropriate weight to his letters of transmittal and his certifications of the Certificates of Service and consider them to be an acceptable substitute for Rule 28.2's requirement for the aforementioned notarized statement by a member of the Bar of this Court.

The Court has frequently stated the proposition that court determinations of issues should be based on "common sense" and the "totality of the circumstances" rather than on "rigid hypertechnical" application of rules.[16/] Also, in deciding most of its cases, the Court has invariably taken into consideration the totality of the circumstances.[17/] Petitioner

16/ Gates v. Illinois, ___U.S.___,103 S.Ct. 2317,2328,2333 (1983.)

17/ See i.e. Village of Arlington Heights v. Metropolitan Housing Development Corp. 429 U.S. 252 (1977); Regents of the Univ. of California v. Bakke, 438 U.S. 265 (1978); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975).

prays that it will do likewise in ruling on the instant Memorandum.

It should be readily apparent from petitioner's Reply and materials in the Appendix, that petitioner acted in good faith in his efforts to comply with the Rules of the Supreme Court of the United States. It would, therefore, be neither fair nor serve the ends of justice to have his petition for a writ of certiorari summarily dismissed on a hypertechnicality, thus denying him the Court's review and decision of the important issues raised which affect not only the petitioner, but also millions of stepfathers similarly situated. Another urgent reason for the Court to grant certiorari is the strong possibility that the federal court system could be overwhelmed by ensuing litigation as a result of the recent passage of the Tax Reform Act of 1984, effective January 1, 1985, as it relates to stepfathers-as

cogently pointed out by the petitioner in his petition. It would appear to be in the respondent's and the Solicitor General's best interests to support a hearing of this petition instead of seeking to prevent it from being granted because of a mere technicality.

Since there can be no doubt that the petition was timely filed, there is no 28 U.S.C. 2101 (c) jurisdictional issue involved. Respondent's sole remaining objection, e.g., Rule 28.2's notarized statement requirement, is, at best de minimis, certainly not of the stature to deny petitioner his right to file his petition or to interfere with the Supreme Court of the United States' jurisdiction over the instant case under 28 U.S.C.2101 (c). This case involves interpretations of federal statutes and regulations and questions of Congress' plenary taxing powers being encroached upon by the

respondent with the support of the Ninth Circuit Court of Appeals.

In any event, respondent has not raised a 28 U.S.C. 2101(c) jurisdictional issue in his Memorandum based on his sole remaining objection; nor does he cite any precedent or authority in support of his position on that point.

Petitioner's de minimus error is understandable, in view of the fact that he has represented himself throughout these entire proceedings and had a good faith belief that Rule 28.2's notarization requirement did not apply to his particular case.

Certificates of Mailing and Certificates of Service for this Reply have been executed by a member of the Bar of this Court and duly notarized as required by Rule 28.2.

CONCLUSION

In view of all of the above, petitioner prays that the Court will reject the Memorandum For The Respondent In Opposition and grant him the relief he seeks in his petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit, which was timely filed on October 22, 1984.

Respectfully submitted,

Max Schneier, Pro Se
P.O. Box 9701
Marina del Rey, Ca. 90295
Tel. (213) 393-0505

P 708 426 401

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Alexander Stevas	
Street and No. Clerk of the Supreme Court of U.S.	
P.O., State and ZIP Code Washington, D.C. 20543	
Postage	$ 31.40
Certified Fee	.75
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	.60
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$ 31.23
Postmark or Date	

* U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

LOS ANGELES, CALIF. OCT 22 1984 MAR VISTA STA.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C.20543

November 28, 1984

Mr. Max Schneier
4150 Via Dolce # 224
Marina del Rey,Ca.90291

Re: Max Schneier,
v. Commissioner of Internal Revenue
No. 84-810

Dear Mr. Schneier:

The petition for a writ of certiorari in the above entitled case was docketed in this Court on November 1, 1984 as No. 84-810.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Very truly yours,

Alexander L. Stewas, Clerk

by

Francis J. Lorson
Chief Deputy Clerk

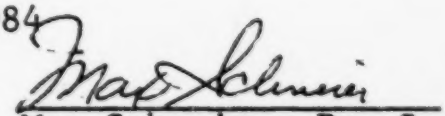
Enclosures

CERTIFICATE OF SERVICE

It is hereby certified that service of this, PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT HAS BEEN MADE TO THE SOLICITOR GENERAL, on this 22nd day of October, 1984, by mailing three copies thereof, in an envelope, with postage prepaid, properly addressed to him as follows:

SOLICITOR GENERAL OF THE UNITED STATES,
U.S. DEPARTMENT OF JUSTICE,
ROOM 5614
WASHINGTON, D.C. 20530

Dated: October 22, 1984



Max Schneier, Pro Se
4150 Via Dolce # 224
Marina del Rey, Ca.
90292
(213) 823-7473

See next page for notary's affirmation.

App. 4

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

On October 22, 1984 before me, the undersigned, a Notary Public in and for said State, personally appeared Max Schneier

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS my hand and official seal.

Signature Cece Sanders

OFFICIAL SEAL
CECE SANDERS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires August 29, 1986

(This area for official notarial seal)

CERTIFICATE OF SERVICE

It is hereby certified that service of this, PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT has been made to respondent, on this 22nd day of October, 1984, by mailing three copies thereof, in an envelope, with postage pre-paid, properly addressed to him as follows:

GLENN L. ARCHER, SR.,
ASSISTANT ATTORNEY GENERAL
TAX DIVISION
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

Dated: October 22, 1984

Max Schnier, Pro Se
4150 Via Dolce # 224
Marina del Rey, Ca.90292
(213) 823-7473

See next page for notary's affirmation.

STATE OF CALIFORNIA } ss.
COUNTY OF Los Angeles }

On October 22, 1984 before me, the undersigned, a Notary Public in and for said State, personally appeared Max Schneier

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same.

WITNESS my hand and official seal.

Signature Cece Sanders

OFFICIAL SEAL
CECE SANDERS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires August 23, 1986

(This area for official notarial seal)

3001 (6/82) (Individual) First American Title Company

U.S. POSTAL SERVICE
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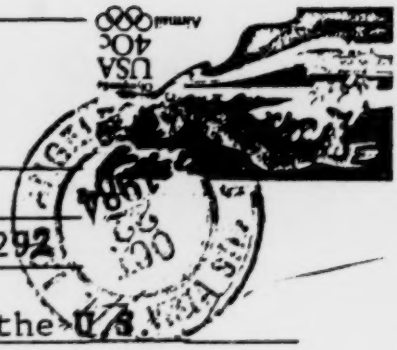

Received From:

Max Schneier

P.O.Box 9701

Marina del Rey, Ca.90292

One piece of ordinary mail addressed to:

Solicitor General of the U.S.

U S.Dept of Justice,Room 5614

Washington, D.C 20530

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Max Schneier

P.O.Box 9701

Marina del Rey,Ca 90292

One piece of ordinary mail addressed to:

Glenn L.Archer Sr. Assistant Atty.General

Tax Division U.S.Dept of Justice,

Washington, D.C. 20530

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OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

November 2, 1984

Mr. Max Schneier
4150 Via Dolce # 224
Marina del Rey, Ca. 90292

Re: Max Schneier v. Commissioner of
Internal Revenue

Dear Mr. Schneier:

This Court's Rules require that any pleading and the appendices thereto, must be be printed or typewritten in the same size and style as that required by the Court's Rules. This does not allow for any reduction of lower court decisions or other materials.

I therfore return your petition with the recommendation that you revise the appendix and resubmit this pleading as soon as possible.

Very truly yours,

Alexander L. Stevas, Clerk

By

Edward C. Schade
Assistant Clerk

cdd
Enc.

P 666 210 435

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
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Sent to Alexander Stevas, Clerk	
Street and No. Supreme Court of the U.S.	
P.O. State and ZIP Code WASHINGTON, D.C. 20543	
Postage	$36.25
Certified Fee	75
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	60
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$37.60
Postmark or Date	VENICE, CA NOV

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-403-517

November 9, 1984

Alexander Stevas, Clerk,
Supreme Court of the United States,
Washington, D.C. 20543

Re: Petition For A Writ of Certiorari
To The United States Court of Appeals
For the Ninth Circuit
Max Schneier
Petitioner
Commissioner of Internal Revenue,
Respondent

Dear Mr. Stevas:

Please find enclosed forty copies of my Petition.

The Appendix has been revised and retyped in the same size and style as that required by the Court's Rules, as ordered by Edward C. Schade, Assistant Cler, on November 2, 1984. In addition, the note numbers in the Petition have been conformed with the revised appendix page numbers.

Three new completely revised copies of the Petition were sent to the Solicitor General of the United States and revised Appendixes, and inserts, with instructions,to the Department of Justice,Tax Division,Counsel to respondent as per Mr.Larsen's instructions. Proofs of service are contained herein.

For your information,

Max Schneier

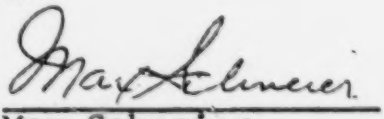
Max Schneier,
4150 Via Dolce # 224
Marina del Rey,Ca. 90292
(213) 823-7473

CERTIFICATE OF SERVICE

It is hereby certified that service of this completely revised PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT HAS BEEN MADE TO THE SOLICITOR GENERAL, on this 9th day of November, 1984 by mailing three copies thereof, in an envelope, with postage prepaid, properly addressed to him as follows:

SOLICITOR GENERAL OF THE UNITED STATES
U.S. DEPARTMENT OF JUSTICE
ROOM 5614
WASHINGTON, D.C. 20530

Dated: November 9th, 1984



Max Schneier,
Pro Se,
4150 Via Dolce # 224
Marina del Rey, Ca.
90292
Tel. (213) 823-7473

See next page for notary's affirmation.

App. 12

3001 (6/82) (Individual) First American Title Company

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

On November 9, 1984 before me, the undersigned, a Notary Public in and for said State, personally appeared Max Schneier

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS my hand and official seal

Signature Cece Sanders

OFFICIAL SEAL
CECE SANDERS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires August 29, 1986

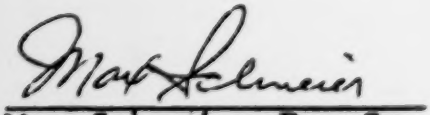
(This area for official notarial seal)

CERTIFICATE OF SERVICE

It is hereby certified that service of this, REVISED APPENDIX AND INSERTS, WITH COMPLETE INSTRUCTIONS, TO THIS PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT HAS BEEN MADE TO RESPONDENT, on this 9th day of November 1984, by mailing three copies thereof, in an envelope, with postage prepaid, properly addressed to him as follows:

GLENN L. ARCHER, SR., ASSISTANT ATTORNEY GENERAL,
TAX DIVISION, U.S. DEPARTMENT OF JUSTICE,
WASHINGTON, D.C. 20530

Dated: November 9, 1984



Max Schneier, Pro Se
4150 Via Dolce, # 224
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See next page for notary's affirmation.

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss.

On November 9, 1984 before me, the undersigned, a Notary Public in and for said State, personally appeared Max Schneier

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

WITNESS my hand and official seal.

Signature [signature]

OFFICIAL SEAL
[illegible]
My Commission [illegible]

(This area for official notarial seal)

3001 (6/82) (Individual) First American Title Company

U.S. POSTAL SERVICE
CERTIFICATE OF MAILING

Received From:

MAX SCHNEIER

4150 VIA DOLCE # 224

MARINA DELREY, CA. 90292

One piece of ordinary mail addressed to:

SOLICITOR GENERAL OF THE UNITED STATES

U.S. DEPARTMENT OF JUSTICE

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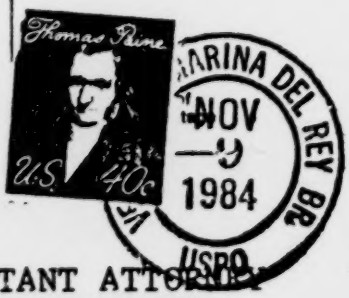

One piece of ordinary mail addressed to:

GLENN L. ARCHER, SR. ASSISTANT ATTORNEY

GENERAL - TAX DIVISION

U.S.DEPT. OF JUSTICE, WASHINGTON, D.C.20530

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